

# **TESTIMONY OF LAWRENCE S. KATKOWSKY**

Michigan House of Representatives

## **COMMITTEE ON REGULATORY REFORM**

May 29, 2007

Members of the Committee, Guests, and other interested persons:

It is my pleasure to testify before you this morning on the subject of House Bill No. 4749, the proposal to amend the current motorcycle helmet law to make the question of wearing them a matter of adult choice. My testimony will explore the real world relationship between motorcycle head injuries in Michigan, the perceived "public burden" if, in fact there is an increase in head injuries if the current law is amended, and the relationship of the law to the Michigan No-Fault law.

As a matter of background, I am a trial lawyer from Bingham Farms, Michigan specializing in motorcycle and ORV litigation statewide and nationally. I have investigated more motorcycle accidents than probably anyone in the country and I have been a certified motorcycle safety instructor in southeast Michigan. In my practice I have dealt with numerous motorcycle head injuries and I am one of very few attorneys in Michigan to have successfully litigated motorcycle helmet defect cases against helmet manufacturers and distributors. I have also litigated all sections of the current no-fault act and its relationship to motorcycles against every major automobile insurer in the State.

### **THE FACTS**

Here are the true facts regarding the current motorcycle injury in Michigan situation and motorcyclists and why the repeal of the mandatory helmet provisions for adults will not burden the public any more than current law does.

#### **1) Single Vehicle Accidents.**

An estimated 30-35% of all motorcycle accidents are single vehicle (running wide in a curve, hitting a deer, etc.) These accidents are not covered by no-fault in Michigan. The vast majority of these accidents occur at speeds (in excess of 25 mph) at which a D.O.T. helmet cannot prevent closed head injury. These injuries are either covered by private insurance or, in a statistically tiny percent, covered by medicare-medicaid, funded by the Federal government.

#### **2) Motorcycle Accidents Involving Motor Vehicles.**

A Currently approximately 60-65% of all motorcycle injuries in Michigan are covered by the Michigan no-fault law which provides that in any accident involving a motorcycle and a car, even with no physical contact, the motorcyclist and passenger's no-fault benefits are paid for by the insurance company of the involved car. [MCL §500.3114]

B. All motorcycle registrations have mandatory insurance requirements. [MCL§500.3103(1)]

C. Every insurer insuring automobiles, trucks, buses **and motorcycles** belong to the catastrophic fund. [MCL §500.3104(1)]

D. Every motorcycle insurer, like other vehicle insurers, gets charged back for vehicles insured. [MCL §500.3104(7)(d)]

E. Currently the catastrophic fund reimburses all insurers for PIP claims paid in excess of \$400,000.00. [MCL §500.3104(2)]

F. Through 1997 motorcyclists paid into the catastrophic fund in assessments of motorcycle insurance policies alone \$75,648,309.00.

G. Through 1997 motorcyclists received out of the catastrophic fund \$72,434,393.00.

H. Through 1997 motorcyclists paid into the fund from motorcycle insurance alone \$3,213,916 more than they received from the fund.

I. Motorcycle fatalities in Michigan (helmet state) and the surrounding non-helmet states (Illinois, Indiana, Ohio, and Wisconsin) are comparable.

J. Motorcycle injuries involve first, the lower extremities, than the middle and upper extremities, and the head itself in only a small fraction of the cases.

K. Injury rates per 100,000 population were highest for the age 16-20 group. For this group the mandatory helmet requirement would be retained under the current repeal proposal.

L. For personal injury lawsuits, insurers defending lawsuits brought by unhelmeted riders would still have the option of claiming comparative negligence if they prove that the lack of a helmet caused or contributed to the injury.

M. The vast majority of persons involved in a motorcycle crash have not taken a motorcycle safety course. Such a requirement would drastically reduce motorcycle injuries and deaths much more than any helmet requirement.

N. Additionally, based upon statistics alone, a significant portion of those motorcycle accidents which do not implicate no-fault, i.e., single vehicle accidents or cycle-cycle, have either medical payments coverage on the motorcycle or private insurance plans providing for the medical on that accident. In my experience, only a small fraction of motorcycle accidents in general involve no medical insurance at all. And, in my experience, this small fraction is no greater than the small fraction of automobile collisions which do not implicate no-fault benefits or other insurances.

O. According to significant experts, the threat of rider's choice for adult helmet usage will make no difference in closed head injury rates for motorcyclists because, according to them no helmet can protect against closed head injuries in accidents.

Opponents of the proposed bill will wail at the prospect of increased head injuries should HB 4749 be enacted. They do so using statistics which, if analyzed, could mean anything, depending on the analyzer. You know that.

However, these opponents have not been on the firing line to actually try to prove that the lack of a proper motorcycle helmet would have prevented significant injury. I have! And the firing line is a court of law and a judge and jury! And what is being fired is testimony of experts, whether they be Harry Hurtand David Thom of UCLA, Tyler Kress of the University of Tennessee, or a very short list of others.

When confronted with these questions I and every other trial lawyer like me, plaintiff or defense, take the facts to an expert on helmets. The facts usually consist of a police accident report, a reconstruction of the accident to give the attorneys the speed of the collision, the speed of the head of the rider with the impacted surface, the nature of the impacted surface, the medical records and/or autopsy reports and the helmet itself.

In every single case that I have ever had where the impact was 35 mph or over every expert, plaintiff or defense, have told me that a helmet would not have prevented the closed head injury or fracture which caused the death or the injury of the rider.

In 95% of all cases where the impact was 25 mph or over the case is rejected by the expert because, even though the impact was to the head, the helmet still could not have prevented same because a helmet cannot prevent injury to such places as the cerebellum, the facial areas, and cannot in any way prevent basilar skull fractures.

The upshot is that I, as a seasoned trial lawyer with a particular expertise in motorcycle products including helmets, only can accept one in fifty of all motorcycle helmet cases referred to me involving a failed helmet, because I cannot obtain the testimony of a reputable expert who will testify that the helmet would have prevented the injury in that particular case.

To close my testimony I wish to relate to you the story of Tom Kanthak who was involved in a motorcycle crash in Battle Creek in August 1997 when a car turned left in front of his motorcycle which was traveling at about 25 mph at the time. Tom was wearing a DOT "approved" full face helmet which had been appropriately sized to his head. Upon the collision Tom flew into the air over the car, did a somersault, and landed on his shoulder blade, skidding along the pavement. As he skidded his helmet, which was fully fastened, rotated forward off of his head and his unhelmeted head struck the curb causing severe skull fractures from which Mr. Kanthak succumbed 12 hours later.

Experts on both sides agreed that the helmet was defectively designed and should not have come off as it did. But the helmet manufacturer, a well-known Canadian manufacturer, in a desperate move, engaged the services of L. J. Dragovic, M.D. , the Medical Examiner of Oakland County and a nationally prominent forensic pathologist. Dr. Dragovic submitted the attached letter which the Court did not accept because it was too close to trial. The letter, though, stated,

As a result of being airborne upon the collision of his motorcycle with the automobile the back of Mr. Kanthak's head impacted an unyielding surface resulting in brain lag within his skull. This phenomenon [known as "coup counter-coup"] is a physical characteristic of a human head in motion, and is in effect with or without ANY helmet on the head.

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While Mr. Kanthak sustained a non-displaced fracture of the occipital bone which was an integral part of the injury pattern, it was not the fracture lines in the bone of the skull that caused his death; rather, it was the severe brain swelling resulting from the subdural bleeding and the contre-coup contusions in the front part of the brain that caused his demise.

The described mechanism is invariably present in this type of head trauma and is irrelevant of [sic] presence of a helmet on the head.

In other words, the **helmet manufacturer as its ultimate defense, stated that it doesn't work!**

Thank you very much.

*Car*

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January 8, 2003

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**Re: Kanthak v Gallet Securite Internationale, et al.**  
**Your File No.: 138-309**

Dear Ms. Getting:

Pursuant to your request I have reviewed the police records and reports, the medical records of Battle Creek Health System, the deposition transcripts of Ms. Artis, Mr. Lake, Mr. W. Kanthak, Dr. Kress, and Mr. Coles, as well as Dr. Webber's report, in reference to the above captioned matter.

It is obvious that all the major arguments about the particular helmet model have been misdirected by the general misunderstanding of the mechanism of the cranio-cerebral injuries sustained by the deceased, Mr. Thomas B. Kanthak.

As a result of being airborne upon the collision of his motorcycle with the automobile, the back of Mr. Kanthak's head impacted an unyielding surface resulting in brain lag within his skull. This phenomenon is a physical characteristic of a human head in motion, and is in effect with or without ANY helmet on the head.

The particular injury pattern that results from this physical phenomenon includes tearing of the bridging veins, resulting in subdural bleeding and the contre-coup bruises of the surface of the brain opposite to the actual point of impact. The bruises of the brain cortex cause the brain to react by swelling. The brain also reacts by swelling to the pressure on it rendered by the space occupying accumulation of blood in the subdural space; and the combined effect of these two detrimental processes created by the same mechanism of injury, result in brain herniations, loss of control of the vital functions, and death.

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The described mechanism is invariably present in this type of head trauma and is irrelevant of presence of absence of a helmet on the head.

I trust this answers your query.

Sincerely,

  
L.J. Dragovic, M.D.